

IC 24-4.5-6

Chapter 6. Administration

(Part 1. Powers and Functions of Administrator)

IC 24-4.5-6-101

Short title

Sec. 101. Short Title – This Chapter shall be known and may be cited as Uniform Consumer Credit Code – Administration.

(Formerly: Acts 1971, P.L.366, SEC.7.)

IC 24-4.5-6-102

Applicability

Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who in this state:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602) and consumer related loans (IC 24-4.5-3-602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

(1) "Consumer credit sale" includes a sale of an interest in land which is a mortgage transaction if the sale is otherwise a consumer credit sale.

(2) "Consumer loan" includes a loan secured by an interest in land which is a mortgage transaction if the loan is otherwise a consumer loan.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by Acts 1981, P.L.218, SEC.8; P.L.152-1986, SEC.71.

IC 24-4.5-6-103

Department

Sec. 103. Department – "Department" means the members of the department of financial institutions. The division of consumer credit shall have charge of the administration of this article.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.45.

IC 24-4.5-6-103.5

Director

Sec. 103.5. Director - "Director" means the director of the department of financial institutions.

As added by P.L.80-1998, SEC.9.

IC 24-4.5-6-104

Powers of department; reliance on rules

Sec. 104. (1) In addition to other powers granted by this article, the department within the limitations provided by law may:

(a) receive and act on complaints, take action designed to obtain

voluntary compliance with this article, or commence proceedings on the department's own initiative;

(b) counsel persons and groups on their rights and duties under this article;

(c) establish programs for the education of consumers with respect to credit practices and problems;

(d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;

(e) adopt, amend, and repeal substantive rules when specifically authorized by this article, and adopt, amend, and repeal procedural rules to carry out the provisions of this article;

(f) maintain more than one (1) office within Indiana; and

(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(2) No liability is imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding that after the act or omission the rule, written notice, written opinion, written interpretation, or written directive may be amended or repealed, or be determined by judicial or other authority to be invalid for any reason.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.247-1983, SEC.22; P.L.14-1992, SEC.46; P.L.45-1995, SEC.15; P.L.172-1997, SEC.9.

IC 24-4.5-6-105

Administrative powers with respect to supervised financial organizations

Sec. 105. Administrative Powers with Respect to Supervised Financial Organizations – (1) With respect to supervised financial organizations, the powers of examination and investigation (IC 24-4.5-3-506 and IC 24-4.5-6-106) and administrative enforcement (IC 24-4.5-6-108) shall be exercised by the department. The department may, at its discretion, accept any examination of any financial institution made by a federal authority in lieu of the examination made under the provisions of this Article. All other powers of the department under this Article may be exercised by him with respect to a supervised financial organization.

(2) If the department receives a complaint or other information concerning non-compliance with this Article by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The department may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The department and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in

maintaining compliance with this Article. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.47.

IC 24-4.5-6-106

Examinations

Sec. 106. Examinations – (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the books and records of persons and may make investigations of persons as may be necessary to determine compliance. The department may administer oaths or affirmations, subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) The department may assess to a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203 an examination fee as established by the department under IC 28-11-3-5 for each day or partial day by which the examination exceeds three (3) days per location to be examined. However, the examination fee provided for in this subsection is payable only to the extent that the fee exceeds the amount of the filing fees paid most recently under IC 24-4.5-6-203.

(3) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the department may apply to (any civil) court for an order compelling compliance.

(5) The department shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992,

SEC.48; P.L.122-1994, SEC.34; P.L.45-1995, SEC.16.

IC 24-4.5-6-107

Administrative procedure

Sec. 107. Except as otherwise provided, IC 4-21.5-3 governs all agency action taken by the department under IC 24-4.5-6 or IC 24-4.5-3-501 through IC 24-4.5-3-513. The provisions of IC 4-22-2 prescribing procedures for the adoption of rules by agencies shall apply to the adoption of rules by the department of financial institutions under this article. However, if the department declares an emergency in the document containing the rule, it may adopt rules permitted by IC 24-4.5-6 under IC 4-22-2-37.1.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.31-1985, SEC.48; P.L.7-1987, SEC.108; P.L.1-1990, SEC.243; P.L.14-1992, SEC.49.

IC 24-4.5-6-108

Administrative enforcement orders

Sec. 108. Administrative Enforcement orders. – (1) After notice and hearing the department may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this Article. A respondent aggrieved by an order of the department may obtain judicial review of the order and the department may obtain an order of the court for enforcement of its order in any civil court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within thirty (30) days after service of the petition for review upon the department, or within any further time the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing the court may (a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the department, or remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of adducing additional specified and material evidence and seeking finding thereon upon good cause shown for the failure to adduce this evidence before the department.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the court on appeal in the same manner and form and with the same effect as in appeals

from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the department is received. If no proceeding is so initiated, the department may obtain a decree of the civil court for enforcement of its order upon a showing that an order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the department may not issue an order pursuant to this section but may bring a civil action for an injunction (IC 24-4.5-6-111).

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.50.

IC 24-4.5-6-109

Assurance of discontinuance

Sec. 109. Assurance of Discontinuance – If it is claimed that a person has engaged in conduct subject to an order by the department (IC 24-4.5-6-108) or by a court (IC 24-4.5-6-110 through IC 24-4.5-6-112), the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.51.

IC 24-4.5-6-110

Injunctions against violation of article

Sec. 110. Injunctions Against Violation of Article – The department may bring a civil action to restrain a person from violating this Article and for other appropriate relief.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.52.

IC 24-4.5-6-111

Injunctions against unconscionable agreements and fraudulent or unconscionable conduct

Sec. 111. Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct – (1) The department may bring a civil action to restrain a creditor or a person acting in behalf of a creditor from engaging in a course of:

- (a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;
- (b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer

loans; or

(c) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds:

(a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this Article is not in itself unconscionable.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.53; P.L.122-1994, SEC.35.

IC 24-4.5-6-112

Temporary relief

Sec. 112. Temporary Relief – With respect to an action brought to enjoin violations of the Article (IC 24-4.5-6-110) or unconscionable agreements or fraudulent or unconscionable conduct

(IC 24-4.5-6-111), the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.54.

IC 24-4.5-6-113

Civil actions by department

Sec. 113. Civil Actions by Department – (1) After demand, the department may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this Article. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Article, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the department, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the department to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The department may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Article, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this Article, it may assess a civil penalty of no more than five thousand dollars (\$5,000). No civil penalty pursuant to this subsection may be

imposed for violations of this Article occurring more than two (2) years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.55.

IC 24-4.5-6-114

Jury trial

Sec. 114. Jury Trial – In an action brought by the department under this Article, the defendant has no right to trial by jury.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.56.

IC 24-4.5-6-115

Debtor's remedies not affected

Sec. 115. Debtor's Remedies Not Affected – The grant of powers to the department in this Article does not affect remedies available to debtors under this Article or under other principles of law or equity.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.57.

IC 24-4.5-6-116

Venue

Sec. 116. Venue – The department may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business or in a county otherwise authorized by rule or venue laws.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.58.

IC 24-4.5-6-117

"Civil court" defined

Sec. 117. As used in this article, "civil court" means any court of Indiana having civil jurisdiction.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.1-1990, SEC.244.

(Part 2. Notification and Fees)

IC 24-4.5-6-201

Applicability

Sec. 201. (1) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a person, including a supervised financial organization, engaged in Indiana in any of the following:

- (a) Making consumer credit sales, consumer leases, or consumer loans.
- (b) Taking assignments of rights against debtors that arise from

sales, leases, or loans by a person having an office or a place of business in Indiana, and undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.

(c) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as a limited line credit insurance producer in the sale of consumer credit insurance.

(2) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section, IC 24-4.5-6-202, and IC 24-4.5-6-203.

(3) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a seller whose credit sales are made using credit cards that:

- (a) are issued by a lender;
- (b) are in the name of the seller; and
- (c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

*(Formerly: Acts 1971, P.L.366, SEC.7; Acts 1972, P.L.182, SEC.3.)
As amended by P.L.152-1986, SEC.72; P.L.14-1992, SEC.59;
P.L.122-1994, SEC.36; P.L.176-1996, SEC.10; P.L.178-2003,
SEC.11.*

IC 24-4.5-6-202

Notification

Sec. 202. (1) Persons subject to IC 24-4.5-6-201, this section, and IC 24-4.5-6-203 shall file notification with the department within thirty (30) days after commencing business in this state, and thereafter, on or before January 31 of each year. The notification shall state:

- (a) name of the person;
- (b) name in which business is transacted if different from subdivision (a);
- (c) address of principal office, which may be outside this state; and
- (d) address of all offices or retail stores, if any, in this state at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

(3) Persons subject to IC 24-4.5-6-201, IC 24-4.5-6-203 and this section, shall notify the department not later than thirty (30) days after the person:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization;
- (d) is notified that the person is subject to revocation or

suspension proceedings by a state or governmental authority with regard to the person's activities;

(e) is under a felony indictment related to the person's activities; or

(f) has been convicted of a felony related to the person's activities.

(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.152-1986, SEC.73; P.L.14-1992, SEC.60; P.L.122-1994, SEC.37; P.L.63-2001, SEC.4 and P.L.134-2001, SEC.4.

IC 24-4.5-6-203

Fees

Sec. 203. (1) Persons required to file notification who are sellers, lessors, or lenders shall pay a fee to be prescribed by the department. The fee shall be a uniform amount for each one hundred thousand dollars (\$100,000), or part thereof, in excess of one hundred thousand dollars (\$100,000), of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in this state within the preceding calendar year and held either by the seller, lessor, or lender for more than thirty (30) days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is a new sale, lease, or loan to the extent of the increase. In prescribing the fee the department shall consider the costs and expense incurred or estimated to be incurred by the department in the administration of this article, including, but not limited to, the supervision, regulation, and examination of persons subject to the provisions of the article.

(2) Persons required to file notification who are assignees shall pay a fee as prescribed and fixed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in this state taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(3) Persons required to file notification who are assignors shall pay a fee as prescribed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana during the preceding calendar year unless the assignee has already paid the fees.

(4) Persons required to renew a license by IC 24-4.5-3-503 may deduct the fees paid under IC 24-4.5-3-503(4)(a) through IC 24-4.5-3-503(4)(c) from fees paid under this section.

(5) A person that is required to file notification under IC 24-4.5-6-202 shall pay a fee at the same rate as prescribed and fixed by the department under subsection (1) on the unpaid balances of all closed end credit obligations originating from the person's

place of business during the calendar year preceding the notification, unless the fees for the obligations have been paid by another person. *(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by Acts 1977, P.L.269, SEC.1; P.L.247-1983, SEC.23; P.L.14-1992, SEC.61; P.L.122-1994, SEC.38.*

IC 24-4.5-6-204

Application to payment for attorneys' services

Sec. 204. IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to payment for services performed by attorneys. *As added by P.L.153-1986, SEC.3.*